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Counsel for Mohamed Poonja
Trustee in Bankruptcy

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re FIRST FINANCIAL LENDER,

Debtor.

Case No. 10-55096 SLJ
Chapter 7

MOHAMED POONJA, Trustee,

Plaintiff.

Adversary Proceeding
No.

v.

TERI H. NGUYEN and VINH NGUYEN,

Defendants.

COMPLAINT FOR AVOIDANCE AND RECOVERY OF FRAUDULENT TRANSFERS

Plaintiff Mohamed Poonja, Trustee in Bankruptcy of the estate of the above Debtor,
alleges as follows:

1. On May 14, 2010, the above Debtor filed a voluntary petition for relief under
Chapter 7 of the Bankruptcy Code. Plaintiff was appointed Trustee in Bankruptcy of the Debtor's
estate upon the filing of the Chapter 7 petition.

2. This is an adversary proceeding for avoidance and recovery of fraudulent transfers.

1 never paid.

2 15. The Debtor's 2007 federal tax return shows outstanding loans to Defendant Teri
3 Nguyen in the amount of \$422,379.

4 16. The Debtor's 2008 federal tax return shows a distribution to Defendant Teri
5 Nguyen in the amount of \$489,233 (the "Transfer").

6 17. Plaintiff is informed and believes that the Debtor made the Transfer as part of
7 winding up its affairs, and that the Transfer became community property of the Defendants as
8 husband and wife.

9 18. Plaintiff is informed and believes that Defendant Teri H. Nguyen contends that she
10 was the sole shareholder of the Debtor in 2007 and 2008; however, the Debtor's 2008 tax returns
11 shows that Defendant Teri Nguyen owned only 80 percent of the shares in the Debtor.

12 19. The Transfer was a transfer of an interest of the Debtor in property.

13 **FIRST CLAIM FOR RELIEF**
14 **Recovery of Fraudulent Transfers**
(11 U.S.C. § 548)

15 20. Plaintiff realleges the allegations set forth in paragraphs 1 through 19 above and
16 incorporates them by reference.

17 21. The Transfer to the Defendants was a transfer of an interest of the Debtor in
18 property and was made within two years before the date on which the Debtor filed her Chapter 7
19 petition.

20 22. The Debtor made the Transfer to the Defendants with the actual intent to hinder,
21 delay, or defraud any entity to which the Debtor was or became indebted on or after the date on
22 which the Transfer was made.

23 WHEREFORE Plaintiff requests judgment as set forth below.

24 **SECOND CLAIM FOR RELIEF**
25 **Avoidance of Fraudulent Transfers**
(11 U.S.C. § 548)

26 23. Plaintiff realleges the allegations set forth in paragraphs 1 through 19 above and
27 incorporates them by reference.

1 24. The Transfer to the Defendants was a transfer of an interest of the Debtor in
2 property and was made on or within two years before the date on which the Debtor filed her
3 Chapter 7 petition.

4 25. The Debtor received less than a reasonably equivalent value in exchange for the
5 Transfer, and was insolvent on the date of the Transfer or became insolvent as a result of the
6 Transfer, or the Debtor was engaged in business or a transaction or was about to engage in a
7 business or a transaction for which any property of the Debtor remaining was an unreasonably
8 small capital, or the Debtor intended to incur or believed that she would incur debts that would be
9 beyond her ability to pay as such debts matured.

10 WHEREFORE Plaintiff requests judgment as set forth below.

11 **THIRD CLAIM FOR RELIEF**
12 **Avoidance of Fraudulent Transfers**
13 **11 U.S.C. § 544(b) and Cal. Civ. Code § 3934.04 et seq.**

14 26. Plaintiff realleges the allegations set forth in paragraphs 1 through 19 above and
15 incorporates them by reference.

16 27. Plaintiff alleges that the Transfer was a transfer of an interest of the Debtor in
17 property and was made within four years of the date on which the Debtor filed its Chapter 7
18 petition.

19 28. Plaintiff alleges that the Debtor made the transfer and incurred obligations relating
20 to those transfers with actual intent to hinder, delay, or defraud any creditor of the Debtor.

21 WHEREFORE Plaintiff requests judgment as set forth below.

22 **FOURTH CLAIM FOR RELIEF**
23 **Avoidance of Fraudulent Transfers**
24 **11 U.S.C. § 544(b) and Cal. Civ. Code §§ 3934.04 et seq.**

25 29. Plaintiff realleges the allegations set forth in paragraphs 1 through 19 above and
26 incorporates them by reference.

27 30. Plaintiff alleges that the Transfer was a transfer of an interest of the Debtor in
28 property and was made within four years of the date on which the Debtor filed its Chapter 7
petition.

1 31. Plaintiff alleges that the Debtor received less than a reasonably equivalent value in
2 exchange for the transfer.

3 32. Plaintiff alleges that the Debtor was insolvent on the dates on which the transfer or
4 transfers were made or became insolvent as a result of the transfer or transfers, or was engaged in
5 the business or transaction or was about to engage in a business or transaction for which any
6 property remaining with the Debtor was unreasonably small capital.

7 WHEREFORE Plaintiff requests judgment as set forth below.

8 **REQUEST FOR RELIEF**

9 Plaintiff requests judgment as follows:

10 A. On Plaintiff's first and second claims for relief, for judgment avoiding the Transfer
11 under 11 U.S.C. § 548(a) and 11 U.S.C. § 550 and for preservation of the Transfer for the benefit
12 of the estate under 11 U.S.C. § 551.

13 B. On the third and fourth claims for relief, for a judgment against the Defendants
14 avoiding the Transfer under 11 U.S.C. § 544 and 550, and California Civil Code Sections 3439 et
15 seq., and preserving those transfers for the benefit of the estate under 11 U.S.C. § 551.

16 C. On the first, second, third, and fourth claims for relief, for a money judgment
17 against Teri H. Nguyen and Vinh Nguyen jointly and severally in the amount of \$489,233.

18 D. For prejudgment interest on any money judgment beginning on the date the
19 bankruptcy petition was filed.

20 E. For such other relief the Court may deem appropriate.

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22 DATED: May 27, 2011

LUCE FORWARD, HAMILTON & SCRIPPS LLP

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24 By: 

Charles P. Maher

Counsel for Mohamed Poonja, Trustee

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